

**REMARKS**

Claims 2-6 and 8 are all the claims pending in the application.

In response to the Amendment filed October 12, 2004, the Examiner removed the previous claim rejections. The current status of the claims is the following.

Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over previously-cited Buchholz et al. (US 5,555,266) in view of previously-cited Bauchot et al. (US 6,141,336), and further in view of previously-cited Fischer (US 5,889,772).

Claims 3 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Buchholz et al. in view of Bauchot et al. and Fischer et al., and further in view of previously-cited Johnston (US 6,064,649).

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Buchholz et al. in view of Bauchot et al. and Fischer et al., and further in view of previously-cited Patel (US 5,953,706).

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Buchholz et al. in view of Bauchot et al., Fischer et al. and Johnston, and further in view of Patel.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Buchholz et al. in view of Fischer et al.

In the Amendment filed October 12, 2004, Applicant argued that the prior art does not teach or suggest the feature of independent claims 2 and 8 of wherein the step (c) allocates the wireless resource when the error occurs in the received data without informing the corresponding wireless terminal of error occurrence. The Examiner concedes that Buchholz et al. and Bauchot

et al. do not disclose this feature of the claims. Instead, the Examiner asserts that Fischer et al. discloses this feature.

In the Office Action dated July 12, 2004, the Examiner referred to col. 12, line 65 – col. 13, line 10 of Fischer et al. as allegedly disclosing this feature of the claims. In the current Office Action, the Examiner indicates that Applicant's argument in the October 12 Amendment was persuasive. Thus, the Examiner now applies col. 13, lines 12-22 of Fischer et al. in addition to col. 12, line 65 – col. 13, line 10. The entire excerpt states the following:

*There accordingly has been described a system and method for monitoring performance of a WLAN and dynamically adjusting its operating parameters in accordance with the current conditions. Each station in the WLAN monitors each transmitted frame to determine whether the frame transmission was protected by an existing outstanding airtime reservation. If a frame is transmitted without an airtime reservation and no response frame is received, the station assumes that the transmission failed due to contention, and monitors the number of contention attempts made to transmit each frame, and the number of failures to receive an acknowledgement. Based on this information, the station dynamically adjusts an RTS/CTS threshold used to determine whether or not an RTS/CTS exchange mechanism should be enabled. If a frame is transmitted during a time interval protected by an outstanding airtime reservation and no response frame is received, the station assumes that the transmission failed due to a bit error, and monitors the number of bit error rate (BER) attempts made to transmit each frame, and the number of BER failures to receive an acknowledgement. Based on this information, the station dynamically adjusts a fragmentation threshold used to determine whether or not a data frame fragmentation mechanism should be enabled. Col. 12, line 65 – col. 13, line 22 of Fischer et al.*

As shown above, the cited excerpt is silent with respect to allocating the wireless resource when the error occurs in the received data without informing the corresponding wireless terminal of error occurrence. Fischer et al. is entirely ambiguous on this point. That is, Fischer et al. does not disclose whether its system allocates the wireless resource when the error occurs in the received data with or without informing the corresponding wireless terminal of error

occurrence. Such ambiguity should not be held against the Applicant. Thus, Applicant submits that claims 2 and 8 are allowable over the prior art.

Claims 3-6 are allowable over the prior art, at least because of their dependence from claim 2, and because the tertiary references fail to make up for the above-described deficiencies of Fischer et al.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Cameron W. Beddard  
Registration No. 46,545

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

Date: April 8, 2005